

CALIFORNIA STATE PERSONNEL BOARD MEETING  
801 Capitol Mall  
Sacramento, California

[www.spb.ca.gov](http://www.spb.ca.gov)

Public Session Location - Room 150  
Closed Session Location - Room 141

FULL BOARD MEETING MINUTES

MARCH 6, 2001

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Ron Alvarado, President  
William Elkins, Vice President  
Florence Bos, Member  
Richard Carpenter, Member  
Sean Harrigan, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. State Personnel Board staff testified before the Senate Select Committee on Whistleblower protection chaired by Senator Speier.
- B. State Personnel Board staff also provided an overview of Board functions at a joint meeting of our Assembly and Senate policy committees.

March 6, 2001

- C. State Personnel Board staff is considering a plan from the Department of General Services to restore some of their delegated examination authority on a probationary basis.
- D. California State Employees Association will conduct a rally at the Board in support of additional efforts and staffing at the Board to address discrimination issues in State service.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

Legal News

- A. Board of Trustees of the University of Alabama v. Garrett (U.S. Supreme Court No. 99-1240, February 21, 2001) - State employers may not be sued in federal court for money damages under the Americans With Disabilities Act. Here in California, state employees may continue to file disability discrimination claims with the State Personnel Board and with the Department of Fair Employment and Housing.

Litigation

- A. Buder v. Office of Environmental Health Hazard Assessment - Mandatory early settlement conference set for May 18, 2001.
- B. Department of Corrections (CDC) v. Villanueva/State Personnel Board - The Superior Court found that counsel for real party-in-interest made a general appearance in the case, notwithstanding his argument that his client had not been properly served and reaffirmed its granting of a writ of mandate, overturning the Board's 3-2 decision in the case. A notice of appeal has been filed.

March 6, 2001

- C. Edgerton v. State Personnel Board/California Department of Transportation - The court has ordered Caltrans to pay attorney's fees (actual fees were adjusted upwards based on the complexity of the issues, skill of the attorneys and results achieved).
- D. Manriquez v. State Personnel Board/California Department of Corrections - Court of appeal has announced its intention to issue its decision in this case without oral argument unless the parties request oral argument. This is the Board's precedential decision 97-05 in which the Board held that a department is not required to waive the minimum qualifications of a position in its consideration of which positions must be offered to an employee who is medically transferred or demoted pursuant to Government Code section 19253.5.
- E. Professional Engineers in California Government v. State Personnel Board/Department of Personnel Administration - The Third District Court of Appeal is prepared to issue its decision in this case without hearing oral argument. This issue is whether the CEA classification is unconstitutional.
- F. State Personnel Board v. Department of Personnel Administration/International Union of Operating Engineers/California State Employees Association - There is a hearing on SPB's request for a stay of further implementation of the Unit 11/12/13 MOU provisions scheduled for March 8, 2001 at 8:30 a.m. in Sacramento Superior Court.
- G. Burks v. State Personnel Board/California Highway Patrol - Mr. Burks has filed a Petition for Review with the California Supreme Court.

Other

- A. Task force on Medical Clearance Options met on March 5, 2001, to consider the legal impact of AB 2222 on pre-employment medical queries.

March 6, 2001

- B. Chief Counsel's Office is working with the Appeals Division on developing a proposal for setting consecutive hearing days in cases where multiple hearing days are necessary.
- C. The task force on Proposed Whistleblower Regulations has had a productive first meeting.

4. REPORT ON LEGISLATION - Judy Balmain

The Board was advised of the following:

- A. Walter Vaughn's testimony before the Select Committee on the Governmental Oversight "Whistleblower Act Hearing" was well received by Senator Speier and staff. State Personnel Board staff has committed to continue to work with the committee staff on amendments to the Act.
- B. State Personnel Board member Sean Harrigan, and Director of Legislation Judy Balmain met with Senator John Burton to discuss the Constitutional mandates the Board has under Article VII.

5. ORAL ARGUMENT

Oral argument in the matter of ANA R. GOMEZ, CASE NO. 99-4831. Appeal from 10% salary reduction for six pay periods. Department of the Youth Authority.

Persons Participating:

Wendi Ross, Labor Relations Counsel, Department of Personnel Administration representing California Youth Authority  
Annette DeAndreis, Staff Legal Counsel California Correctional Peace Officers Association representing appellant

ACTION: Submitted

March 6, 2001

6. ORAL ARGUMENT

Oral argument in the matter of RANDOLPH HARTHORN, CASE NO. 99-3175. Appeal from dismissal. Department of Developmental Services.

Persons Participating:

Charles McClamma, Labor Relations Specialist, representing the Department of Developmental Services  
M. Alim Malik, Attorney at Law, Jackson DeMarco & Peckenpaugh, representing appellant

ACTION: Submitted

7. ORAL ARGUMENT

Oral argument in the matter of JILL McNAMARA, CASE NO. 98-4252. Appeal from dismissal. California Highway Patrol.

Persons Participating:

James E. McFetridge, Deputy Attorney General, Department of Justice representing California Highway Patrol  
Colin McLeod, Labor Relations Representative, California State Employees Association representing appellant

ACTION: Submitted

8. ORAL ARGUMENT in the matter of ROMONDO SIZEMORE, CASE NO. 00-0418. Appeal from dismissal. Department of Corrections.

Persons Participating:

Vikki Thompson, Staff Counsel, representing Department of Corrections  
Larry Watkins, Attorney at Law, representing appellant

ACTION: Submitted

March 6, 2001

9. HEARING - JOINT LABOR MANAGEMENT COMMITTEE ON  
DISCRIMINATION (JL/MCD) REPORT

Formal presentation of JL/MCD findings and recommendations  
to the State Personnel Board.

Persons Participating:

Robin J. Corralejo, Co-Chair, Management, Joint  
Labor/Management Committee on Discrimination  
Alejandro Garza, Co-Chair, Labor, Joint Labor/Management  
Committee on Discrimination  
Leslie Laudon  
Marcell Mills  
Marcos R. Contreras, Racial Justice Coalition  
Francisca Pass, Chair of Lavender Committee, Civil Service  
Division, CSEA, SEIU Local 1000  
Paul G. Coke, CSEA Legislative Chair  
Mary Butera, CCTC Director of Human Resources  
Rosie Thomas, Join Labor/Management Committee on  
Discrimination

ACTION: Informational hearing held

BOARD ACTIONS

10. STATE PERSONNEL BOARD SUMMARY MINUTES OF  
FEBRUARY 21, 2001

ACTION: Adopted on March 6, 2001.

VOTE: Alvarado, Elkins, Bos, Carpenter, Harrigan - aye.

11. ACTION ON SUBMITTED ITEMS

See pages 16-18

12. ADMINISTRATIVE LAW JUDGE CASES

On March 6, 2001, the Board adopted the following decisions  
presented by Elise Rose, Chief Counsel, California State  
Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter, Harrigan - Aye.

**NOTE:** Elkins voted No on Henry L. Horsley, Case  
No. 00-2518 and Bos recused herself from vote on Jerald  
Elliott, Case No. 00-3394.

March 6, 2001

PROPOSED DECISIONS

CYNTHIA PENA, Case No. 00-2288

Appeal from dismissal

Correctional Officer

Valley State Prison for Women

Department of Corrections

ACTION: Dismissal sustained

BARTON BURNETT, CASE NO. 00-2787

Appeal from 60-work day's suspension

Correctional Officer

Valley State Prison for Women

Department of Corrections

ACTION: 60-work day's suspension sustained

HENRY L. HORSLEY, Case No. 00-2518

Appeal from ten-calendar day's suspension

Parole Agent I, Adult Parole

Department of Corrections

ACTION: Ten-calendar day's suspension sustained

JERALD ELLIOTT, Case No. 00-3394

Appeal from dismissal

Instructional Computing Consultant II

San Diego State University

ACTION: Dismissal sustained

MARCO A. MONTANO, Case No. 00-2289

Appeal from one-step reduction of salary for six months

Correctional Officer

California State Prison at Solano

Department of Corrections

ACTION: One-step reduction in salary for six months  
revoked

RICHARD TWEET, case no. 00-2419

Appeal from one-step reduction of salary for six months

Correctional Officer

California State Prison at Solano

Department of Corrections

ACTION: One-step reduction in salary for six month  
sustained

March 6, 2001

CAROLYN HYMAN-PERRY, CASE NO. 00-0140

Appeal from dismissal

Sergeant

Department of the Youth Authority

ACTION: Dismissal sustained

DEBBIE GSELL, CASE No. 00-3239

Appeal from rejection during probationary period

Program Technician II

Department of Social Services

ACTION: Rejection during probationary period affirmed and appeal denied

TROY ALLEN SILVA, CASE NO. 00-2036

Appeal from rejection during probationary period

Assistant Information Systems Analyst

Franchise Tax Board

ACTION: Rejection during probationary period affirmed and appeal denied

JOHN GAMBLE, Case No. 00-3391

Appeal from official reprimand

Library Technical Assistant I

High Desert State Prison

Department of Corrections

ACTION: Official letter of reprimand modified to a letter of instruction

PETITIONS FOR REHEARING

ERNESTINE CASTRO, case no. 99-4643

Appeal from Dismissal

Employment Program Representative

Employment Development Department

ACTION: Petition for Rehearing filed by the Appellant  
Denied

MITCHELL BLAIR, CASE NO. 99-0242

Appeal from Dismissal

Youth Correctional Counselor

Ventura Youth Correctional Facility

Department of the Youth Authority

ACTION: Petition for Rehearing filed by the Respondent  
Granted



March 6, 2001

SVETOZAR STUKOVSKY, CASE NO. 99-3583

Appeal from Dismissal

Physician and Surgeon

Wasco State Prison

Department of Corrections

ACTION: Petition for Rehearing filed by the Respondent  
Granted

13. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1  
EXTENSION.

ACTION: See pages 19-22

14. WITHHOLD APPEALS

On March 6, 2001, the Board adopted the following decisions  
presented by Walter Vaughn, Executive Officer, California  
State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter, Harrigan - Aye.

- A. RYAN GUTIERREZ, CASE NO. 00-2715

Classification: Youth Correctional Officer

Department of the Youth Authority

ACTION: GRANTED

- B. KEITH D. WENDL, CASE NO. 00-2640

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

- C. ENOCH C. ALEXANDER, CASE NO. 00-2669

Classification: Youth Correctional Officer

Department of the Youth Authority

ACTION: DENIED

- D. THOMAS C. HALL, CASE NO. 00-2406

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

March 6, 2001

E. DAVID O'CALLAGHAN, CASE NO. 00-2895  
Classification: Hospital Police Officer I  
Department of Mental Health  
ACTION: DENIED

F. MICHAEL F. WALKER, CASE NO. 00-2668  
Classification: Correctional Officer  
Department of Corrections  
ACTION: DENIED

G. TROY KIMBERLING, CASE NO. 00-2716  
Classification: Cadet, CHP  
California Highway Patrol  
ACTION:  
ACTION: DENIED

15. MEDICAL APPEALS

On March 6, 2001, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter, Harrigan - Aye.

A. CHRISTOPHER J. BERMAN, CASE NO. 00-2197  
Classification: Correctional Officer  
Department of Corrections  
ACTION: DENIED

16. MERIT ISSUE COMPLAINT APPEALS

On March 6, 2001, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter, Harrigan - Aye.

A. JANIS TAYLOR  
Staff Services Analyst  
Department of Health Services  
ACTION: DENIED

17. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

Staff has approved the following actions:

March 6, 2001

- A. DPA is requesting minor revisions to alternate range criteria 239.

ACTION: Noted

18. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

- A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

- (1) CHIEF DEPUTY DIRECTOR

- The California Gambling Control Commission (CGCC) proposes to allocate the above position to the CEA category. The Chief Deputy Director will assist the Director in the formulation, administration, and implementation of departmental policies and programs and in the daily operation of the Commission. In addition to overseeing all administrative functions, this position will have specific involvement in all fiduciary matters, with emphasis on management of the Indian Gaming Revenue Sharing Trust Fund, which represents one of the most significant and politically sensitive tasks for the CGCC. The department indicates that the position will be at the first organizational level and will report to the Director.

- (2) DEPUTY DIRECTOR, LICENSING OVERSIGHT

- The California Gambling Control Commission (CGCC) proposes to allocate the above position to the CEA category. The Deputy Director, Licensing Oversight, will be responsible for managing the licensing oversight program for the agency. As mandated by statute, responsibilities of this position will include ensuring licenses, approvals, and permits are not issued or held in any fashion by unqualified or disqualified persons and/or related operations that are contrary to the public health, safety, and welfare. The department indicates that the position will be at the second organizational level and will report to the directorate.

March 6, 2001

(3) CHIEF OF LEGISLATION

The California Gambling Control Commission (CGCC) proposes to allocate the above position to the CEA category. The Chief of Legislation will be responsible for developing and managing the Commission's legislative program; representing the CGCC before legislators, legislative committees, the Legislative Analyst's Office, the Governor's Office and local and tribal governments. The department indicates that the position will be at the second organizational level and will report to the directorate.

(4) CHIEF OF PUBLIC INFORMATION, OUTREACH AND MARKETING

The California Gambling Control Commission (CGCC) proposes to allocate the above position to the CEA category. The Chief of Public Information, Outreach and Marketing will be responsible for handling all media inquiries and the development of an outreach program to the general public, gambling industry, local government, tribal government, and other interested parties concerning the activities of the Commission. This position will also be responsible for the oversight of the advertising campaigns of the gambling industry as required by statute. The department indicates that the position will be at the second organizational level and will report to the Directorate.

(5) CHIEF ARCHITECT, CALIFORNIA CHILD SUPPORT AUTOMATED SYSTEMS PROJECT

The Franchise Tax Board proposes to allocate the above position to the CEA category. The Chief Architect has responsibility for recommending, developing, and implementing policies pertaining to the delivery of the California Child Support Automated Systems (CCSAS) technical architecture models. These architectural models will facilitate the delivery of a major statewide automation system that will impact the state's ability to successfully administer the Child Support Enforcement Program. The department

March 6, 2001

indicates that the position will be at the second organizational level and will report to the Assistant Executive Officer, CCSAS Project.

- (6) CHIEF, GOVERNMENT AND SPECIAL PROGRAMS DIVISION  
The Department of Consumer Affairs proposes to allocate the above position to the CEA category. This position is responsible for policy and management of: the E-Government Projects and Department's liaison with the Governor's Office on the Government/Business Initiative; two bureaus (Hearing Aid Dispensers and Telephone Medical Advice Services); the Department's Family Support Program, Unlawful Detainer Assistants and Legal Assistants Program; liaison to the Nursing Home Administrator Bureau; and will provide policy oversight and program expertise on sunset responses and review, development, implementation of chaptered legislation for newly created bureaus, programs, and board, and implement new programs and boards on behalf of the department. The department indicates that the position will be at the second organizational level and will report to the directorate.
- (7) DIRECTOR OF REAL ESTATE PROJECT DEVELOPMENTS  
The Wildlife Conservation Board proposes to allocate the above position to the CEA category. The Director of Real Estate Project Development works with the land acquisition community, including federal and state regulatory and resources agencies, nonprofit organizations, land trusts and the local environmental community. The position works closely with the Legislature and their constituents and provides the real estate-related advice and expertise to the three conservancies on which the Board is a member. The position also plays a critical role in formulating and administering the policies and procedures for the Land Acquisition Program; is responsible for developing Board policies related to the Land Acquisition Program; monitors project components and ensures consistency within the Board, and with other state and federal agencies; represents the Board's interests in federal and

March 6, 2001

state-mandated policy committees; and develops, evaluates and negotiates the most sensitive and complex land acquisition projects. The department indicates that the position will be at the second organizational level and will report to the Executive Director, Wildlife Conservation Board.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

- (1) CHIEF, CULTURAL RESOURCES DIVISION  
The Department of Parks and Recreation's request to allocate the above position to the CEA category has been approved effective February 7, 2001.
- (2) CHIEF, OCCUPATIONAL LICENSING BRANCH  
The Department of Motor Vehicles' request to allocate the above position to the CEA category has been approved effective February 9, 2001.
- (3) CHIEF, LOAN PROGRAM OVERSIGHT DIVISION  
The California Student Aid Commission's request to allocate the above position to the CEA category has been approved effective February 9, 2001.

C. REQUESTS TO REFILL CEA POSITIONS ESTABLISHED BETWEEN 6/30/95 AND 1/1/99

- (1) CHIEF, POLICY, ADMINISTRATION AND INFORMATION TECHNOLOGY BRANCH, LICENSING & CERTIFICATION PROGRAM  
The Department of Health Services is requesting to refill the above position.
- (2) CHIEF, MEDICAL REVIEW BRANCH  
The Department of Health Services is requesting to refill the above position.

(3) DEPUTY EXECUTIVE DIRECTOR, CALIFORNIA BUILDING  
STANDARDS COMMISSION  
The California Building Standards Commission is  
requesting to refill the above position.

(4) CHIEF COUNSEL  
The California State Lottery is requesting to  
refill the above position.

D. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO  
REFILL CEA POSITIONS ESTABLISHED BETWEEN 6/30/95 AND  
1/1/99

ACTION: Noted

A D J O U R N M E N T

March 6, 2001

SUBMITTED

1. DIANA HENNING, CASE NO. 98-4118/99-0772. Appeal from official reprimand/medical termination, demotion and transfer. Department of Corrections. (Oral argument held November 1, 2000).

NO ACTION

2. DAVID PINSON, CASE NO. 99-5344P. Appeal from 5 working days suspension. Department of Corrections. (Oral argument held January 3, 2001).

ACTION: On March 6, 2001, the Board adopted a non-precedential decision in which the majority decided to revoke the penalty, and award backpay and benefits.

VOTE: Alvarado, Elkins, Harrigan - Aye. (Bos and Carpenter dissented).

3. CARLA EGGMAN-GARRETT, CASE NO. 00-0008. Appeal from rejection during probationary period. Department of Corrections. (Oral argument held February 6, 2001).

NO ACTION

4. GABRIEL HERNANDEZ, CASE NO. 2868. Appeal from dismissal. Department of Mental Health. (Oral argument held February 6, 2001).

NO ACTION

5. MARTIN SMITH, CASE NO. 98-4017P. Appeal from dismissal. Department of Fish and Game. (Oral argument held February 6, 2001).

ACTION: On March 6, 2001, the Board adopted a non-precedential decision modifying the dismissal to a 3-month suspension, and awarding lost backpay and benefits.

VOTE: Alvarado, Elkins, Bos, Carpenter, Harrigan - Aye.



March 6, 2001

6. LAQUITA PETERSON, CASE NO. 99-5285. Appeal from demotion. Department of Corrections. (Oral argument held February 6, 2001).

NO ACTION

7. STEPHANIE T. LAAM, CASE NO. 00-0340. Appeal from dismissal. Department of Corrections. (Oral argument held February 7, 2001).

ACTION: On March 6, 2001, the Board adopted a non-precedential decision revoking the dismissal and ordering backpay and benefits.

VOTE: Alvarado, Elkins, Bos, Carpenter, Harrigan - Aye.

8. STATE COMPENSATION INSURANCE FUND (SCIF) CONTRACT HEARING  
PSC NO. 00-03  
Appeal of the State Compensation Insurance Fund from the Executive Officer's September 12, 2000 disapproval of SCIF's contract with Curials, Dellaverson, Hirschfeld, Kelly & Kramer LLP in response to the request for review submitted by the Association of California State Attorneys and Administrative Law Judges. (Hearing held February 7, 2001).

ACTION: On March 6, 2001, the Board adopted a decision finding that it has jurisdiction to review the Contract for compliance with Government Code § 19130, and that the Contract is not justified under Government Code § 19130(b)(3), (5), (8) or (10). The Board, therefore, sustained the Executive Officer's decision disapproving the Contract.

VOTE: Alvarado, Elkins, Bos, Carpenter, Harrigan - Aye.

9. CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) CONTRACT  
HEARING PSC NO. 00-04  
Appeal of the California State Employees Association from the Executive Officer's September 20, 2000 approval of the contracts between the California Public Utilities Commission and Larkin & Associates and Overland Consulting for Auditing Services. (Hearing held February 7, 2001).

March 6, 2001

ACTION: On March 6, 2001, the Board adopted a decision finding that CPUC has shown that the Contracts are justified under Government Code § 19130(b)(10)

VOTE: Alvarado, Elkins, Bos, Carpenter, Harrigan - Aye.

10. KEITH A. WATKINS, CASE NO. 00-2738, Appeal from dismissal. Department of Water Resources. Proposed decision taken under submission February 21, 2001

ACTION: On March 6, 2001, adopted Board decision sustaining dismissal.

VOTE: Alvarado, Elkins, Bos, Carpenter, Harrigan - Aye.

**NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION**

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional forty-five days, the Board hereby publishes its substantial reasons for the need for the forty-five day extension for some of the cases now pending before it for decision.

An additional forty-five days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than 6 months as of the date of the Board meeting.

March 6, 2001

**GOVERNMENT CODE § 18671.1 RESOLUTION**

**WHEREAS**, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

**WHEREAS**, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

**WHEREAS**, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

**WHEREAS**, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

\* \* \* \* \*

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on March 6, 2001.

---

WALTER VAUGHN  
Executive Officer  
California State Personnel Board

VOTE: Alvarado, Elkins, Bos, Carpenter, Harrigan - Aye.